

**INTERPRETATION OF THE DIRECTOR
PURSUANT TO TITLE 23 OF SEATTLE MUNICIPAL CODE**

In the Matter of)	
the Use of the)	Interpretation
Property at)	No. 04-001
5432 – 39 th Avenue West)	DPD Project No. 2402157

Background

This interpretation was requested by attorney Bill H. Williamson, on behalf of his client Steven C. Thompson. According to the King County Assessor's Office, Mr. Thompson is the taxpayer of record for the subject property, owned by Mr. Thompson's mother Claire Thompson. The property is about 50 feet wide by 243 feet deep (on average) and contains about 12,150 square feet of area. The easterly portion of the property is submerged. The dry-land portion of the property, approximately the westerly two-thirds, contains about 8,250 square feet of total area. The property is occupied by an existing single family residence and detached garage and is currently regulated as one existing building site. Mr. Thompson requests that the Seattle Department of Planning and Development (DPD) determine that there are two separate building sites on the subject property, subject to moving or demolition of the existing house, through application of the exceptions to minimum lot area requirements set forth in Seattle Municipal Code (SMC) Section 23.44.010 B.

Findings of Fact

1. The subject property is addressed in DPD records as 5432 39th Avenue West. It is informally described as Lots M and N of Bolcom Canal Lumber Company's Addition (Unrecorded). The property is also given a metes and bounds legal description in records of the King County Assessor's Office, under King County property tax identification number 090400-0065. A copy of a Geographic Information Service (GIS) land use map, showing the configuration of the property, is attached to this interpretation as Appendix A. The metes and bounds legal description in King County records is attached as Appendix B. According to the Engineering Quartersection map maintained by the Seattle Department of Transportation (SDOT) and accessible through the City's GIS system, the property is part of a large "unplatted reserve" parcel on the east side of 39th Avenue West between West Sheridan Street on the north side and West Cramer Street on the south side. According to the quarter section map, 39th Avenue West was dedicated under Seattle City Ordinance No. 60477, effective 1931. The quarter section map is attached to this interpretation as Appendix C. This interpretation will hereafter refer to the subject property, unless otherwise indicated, as Parcel 0065.
2. The applicable zoning for Parcel 0065 is SF-5000: Single-Family Residential, with a minimum lot size of 5000 square feet. Parcel 0065 is a waterfront parcel located in the Lawtonwood neighborhood, near Discovery Park in Magnolia. The property is partly dry land and partly submerged. The dry-land portion of the property is within the UR (Urban Residential) Shoreline Environment, as set forth in SMC Chapter 23.60, the Seattle Shoreline Master Program. The submerged portion of the property is within the CR (Conservancy Recreation) Shoreline Environment.
3. Parcel 0065 is about 50 feet wide and about 243 feet deep, with a total area of about 12,150 square feet, as measured on the GIS land use map. According to information supplied to DPD in a letter received March 25, 2004, from Professional Land Surveyor

David L. Hill of Concept Engineering Inc., written on behalf of Mr. Thompson, the total dry-land area of Parcel 0065 is about 7,966 square feet. The remainder of the property is submerged.

4. Permission was granted to construct the house addressed as 5432 39th Avenue West under Seattle Building Permit No. 457917, issued August 9, 1957. Permit No. 457917 identifies Lots M and N, Bolcom Canal Lumber Company's Addition (Unrecorded), as the building site. Permission was granted to construct a carport appurtenant to the existing one family dwelling under Permit No. 467436, issued July 15, 1958. This permit, too, describes the building site as Lots M and N together. Permit No. 467436 was superseded by Permit No. 487233, issued December 14, 1960, which authorized construction of a detached garage appurtenant to the one family residence. Permit No. 487233 also describes the building site as Lots M and N together. No more recent building permits for Parcel 0065 have been discovered in DCLU records.
5. Abstracts of title maintained by DPD show that Lots M and N of Bolcom Canal Lumber Company's Addition (Unrecorded) were held as part of a larger tract owned by Bolcom Canal Lumber Company prior to 1938. In 1938, Lots M and N were conveyed by warranty deed to Smith from the Bolcom Canal Lumber Company as part of a larger parcel including Lot L to the south and Lots O and P to the north. Lots M and N together were conveyed by warranty deed from Smith to Charles and Anna Thompson on February 6, 1952. Charles and Anna Thompson quitclaimed the property to the Charles and Anna Thompson Trust on February 11, 1976. New entries have not been made in the DPD abstracts since 1991. However, it appears that Parcel 0065 (comprising unrecorded Lots M and N) has been continuously owned by the Thompson family since 1952, prior to construction of the existing residence on the property.
6. A survey has not been provided to DPD with the exact size of Parcel 0065. According to the King County Assessor's records, Parcel 0065 has a total area of 6,624 square feet. This figure is apparently based on dry land area only. David Hill of Concept Engineering has provided two estimates of the dry land area. The first estimate is provided in materials prepared by Mr. Hill for Mr. Williamson, dated May 6, 2003 and provided to DPD by Mr. Williamson in attachments to a letter dated May 21, 2003. The first estimate is based on measurements using the City of Seattle GIS maps and yields an approximate total area of 9,182 square feet of dry land. The second estimate, also found in the attachments to Mr. Williamson's May 21, 2003 letter, is based on measurements of a shoreline aerial photograph in the DPD records. The second estimate yields an approximate total area of 7,967 square feet of dry land. In his letter to DPD of March 25, 2004, Mr. Hill appears to have used the second estimate in calculating the size of unrecorded Lots M and N at 3,978 square feet and 3,988 square feet, respectively, as these figures added together equal a total of 7,966 square feet.
7. According to the GIS map, Parcel 0065 is located on the east side of 39th Avenue West between West Sheridan Street to the north and West Cramer Street on the south, which is also occupied by ten other tax parcels. These tax parcels are all developed with single family residences. In every case but one, 5444 39th Avenue West, each tax parcel is comprised of two unrecorded lots of either Bolcom Canal Lumber Company's Addition or Scheuerman Investment Company Tracts. The 5444 39th Avenue West parcel comprises four unrecorded lots of Scheuerman Investment Company Tracts. Thus, the property comprising all eleven tax parcels may also be informally described as Lots A-P, Bolcom Canal Lumber Company's Addition (Unrecorded) and Lots A-H, Scheuerman Investment Company Tracts (Unrecorded). Again using Mr. Hill's estimates as provided in his materials prepared for Williamson letter of May 21, 2003, the total area of the land along the east side of 39th Avenue West between West Sheridan Street and West Cramer Street is 103,961 square feet using the GIS map

measurements or 94,502 square feet using measurements based on the shoreline aerial photographs. Again, in estimating the total area of the eleven parcels in his letter received March 25, 2004, Mr. Hill appears to be using the area derived from the shoreline aerial photographs.

8. Seattle Municipal Code (SMC) Section 23.44.010 B provides four exceptions to the general rule of Section 23.44.010 A that a single-family-zoned lot must meet the minimum lot area requirement of its zone. Section 23.44.010 A and B provide in part as follows:

“A. Minimum Lot Area. The minimum lot area shall be:

S.F. Zone	Minimum Lot Area Required
S.F. 9600	9,600 sq. ft.
S.F. 7200	7,200 sq. ft.
S.F. 5000	5,000 sq. ft.

Submerged lands shall not be counted in calculating the area of lots for the purpose of these minimum lot area requirements, or the exceptions to minimum lot area requirements provided in this section.

B. Exceptions to Minimum Lot Area. The following exceptions to minimum lot area are subject to the limits of subsection B5. A lot which does not satisfy the minimum lot area requirements of its zone may be developed or redeveloped as a separate building site according to the following:

1. In order to recognize separate building sites established in the public record under previous codes, to allow the consolidation of very small lots into larger lots, to adjust lot lines to permit more orderly development patterns, and to create additional buildable sites out of oversized lots which are compatible with surrounding lots, the following exceptions are permitted if the Director determines that:

a. The lot was established as a separate building site in the public records of the county or City prior to July 24, 1957 by deed, contract of sale, mortgage, property tax segregation, platting or building permit and has an area of at least seventy-five (75) percent of the minimum required lot area and at least eighty (80) percent of the mean lot area of the lots on the same block face and within the same zone in which the lot is located (Exhibit 23.44.010 A), or

b. The lot is or was created by subdivision, short subdivision or lot boundary adjustment, and is at least seventy-five (75) percent of the minimum required lot area and is at least eighty (80) percent of the mean lot area of the lots on the same block face within which the lot will be located and within the same zone (Exhibit 23.44.010 A); or

2. The lot area deficit is the result of a dedication or sale of a portion of the lot to the City or state for street or highway purposes and payment was received for only that portion of the lot, and the lot area remaining is at least fifty (50) percent of the minimum required; or

3. The lot would qualify as a legal building site under this section but for a reduction in lot area due to court-ordered adverse possession, and the amount by which the lot was so reduced was less than ten (10) percent of the former area of the lot, provided, that this exception shall not apply to lots reduced to less than fifty (50) percent of the minimum area required under subsection A of Section 23.44.010; or
4. The lot was established as a separate building site in the public records of the county or City prior to July 24, 1957 by deed, contract of sale, mortgage, property tax segregation, platting or building permit, and falls into one (1) of the following categories; provided that, lots on totally submerged lands shall not qualify for this exception:
 - a. The lot is not held in common ownership with any contiguous lot on or after the effective date of the ordinance from which this subsection derives [Ord. 113216, effective January 18, 1987], or
 - b. The lot is or has been held in common ownership with a contiguous lot on or after the effective date of the ordinance from which this subsection derives [Ord. 113216, effective January 18, 1987] and is or has been developed with a principal structure which is wholly within the lot boundaries; provided, that no portion of any contiguous lot is required to meet the least restrictive of lot area, lot coverage, setback or yard requirements which were in effect at the time of the original construction of the principal structure, at the time of its subsequent additions, or which are in effect at the time of redevelopment of the lot (Exhibit 23.44.010 B), or
 - c. The lot is or has been held in common ownership with a contiguous lot on or after the effective date of the ordinance from which this subsection derives and is not developed with all or part of a principal structure; provided, that no portion of the lot is required to meet the least restrictive of lot area, lot coverage, setback or yard requirements which were in effect for a principal structure on the contiguous lot at the time of the construction of the principal structure, at the time of its subsequent additions, or which are in effect at the time of the development of the lot (Exhibit 23.44.010 B); and provided further, that if any portion of the lot to be developed has been used to meet the parking requirement in effect for a principal structure on a contiguous lot, such parking requirement can and shall be legally met on the contiguous lot.

For purposes of this subsection B4, removal of all or any part of a principal structure or destruction by fire or act of nature on or after the effective date of the ordinance from which this subsection derives shall not qualify the lot for the minimum lot area exception (Exhibit 23.44.010 C); .¹

9. The terms “block face” and “block front” are defined in SMC Section 23.84.004 as follows:
 - “ ‘Block face.’ See ‘Block front.’ ”
 - “ ‘Block front’ means the frontage of property along one (1) side of a street bound on three (3) sides by the centerline of platted streets and on the fourth side by an alley or rear property lines.”

¹ The last paragraph of subsection 23.44.010 B 4 was added by Seattle City Ordinance No. 113216 and became effective on January 18, 1987.

10. Rules of statutory construction, applicable to administrative regulations as well, are found in decisions of Washington Courts. Among these is the following: “It is a well settled rule of statutory construction that exceptions to legislative enactments must be strictly construed.” *Hall v. Corporation of Catholic Archbishop of Seattle*, 80 Wn.2d 797, 498 P.2d 844 (1972) [interpreting a regulation of the Seattle Building Code].
11. A survey of the GIS maps shows that the Magnolia neighborhood is platted in a wide variety of lot shapes and sizes. While there are few platted blocks immediately adjacent to the subject property, there are a number immediately south of Discovery Park that are zoned SF-5000. For example, in Bluff Park Addition, the lots are predominantly platted at 30 feet wide by 102 feet deep, but actually developed in various patterns comprising pieces of platted lots. In Pleasant Valley Addition, immediately east of Bluff Park, the lots are platted at 50 feet wide by 120 feet deep. In Prosser Addition, east of Pleasant Valley, the platting pattern is lots of 40 feet in width by 120 feet deep. In Hiawatha Park Addition, to the southwest of Bluff Park, some block faces are platted at 25 feet wide by 76 feet deep, while others are platted at 25 feet wide by 116 feet deep in the same plat. Actual building sites in Hiawatha Park vary but mostly include two platted lots or three platted lots per house. The platting pattern of varying lot sizes and plats of various sizes, too, is found not only in Magnolia but throughout the City of Seattle, as is apparent from a review of the City’s GIS maps. Some plats, in fact, were platted in much larger parcels, which were then subdivided into smaller lots by means other than platting, such as a building permit, tax segregation, or conveyance by deed. One example, in the Crown Hill neighborhood of north Ballard, in SF-7200 zoning, is Walls’ Acre Tracts, where the platting is for lots 132 feet wide by 270 feet deep, but the actual parcels as developed are generally 66 feet wide by 135 feet deep.

Conclusions

1. In order to qualify as a legal building site under the Land Use Code, a lot must meet the minimum lot area requirement for its zone or else qualify for one of the codified exceptions to that requirement set forth in SMC Section 23.44.010 B, or a variance from the minimum lot area requirement must be granted. If a lot is vacant, no portion of that lot may have been used to meet development standards for a structure on an adjacent lot. Finally, the lot must have street access meeting Land Use Code standards. While Parcel 0065 as a whole exceeds the minimum lot area requirements, the owner seeks to legalize unrecorded Lots M and N, which together comprise Parcel 0065, as separate building sites. Unrecorded Lots M and N do not individually have sufficient dry land area to meet the minimum lot area requirements of the SF-5000 zone. (See Findings of Fact Nos. 2 and 3.) Per Section 23.44.010 A, submerged land cannot be counted in calculating the area of lots for purposes of meeting either the minimum lot area requirements or the exceptions to minimum lot area (Finding of Fact No. 8).
2. Four exceptions to the minimum area requirement are provided in the Land Use Code under Seattle Municipal Code (SMC) Section 23.44.010 B (Finding of Fact No. 8).² In the request for interpretation, it is contended that the first exception, known as the “75/80” rule, should be applied to allow a short subdivision of Parcel 0065. Before analyzing the application of the 75/80 rule in this interpretation, it will be shown that the other three exceptions do not apply to Parcel 0065.
3. The second exception is provided by 23.44.010 B 2 for lots that are undersized as a result of a dedication or sale of a portion of the lot to the City or state for street or

² SMC Section 23.44.010 B actually contains six subsections, but the fifth and sixth subsections deal with Environmentally Critical Areas and clustered housing planned developments, and are not relevant to the subject property.

- highway purposes. While a portion of the unplatted reserve that includes Parcel 0065 was dedicated for street purposes, the dedication occurred in 1931 (see Finding of Fact No. 1), which was well prior to the separate conveyance of Parcel 0065 by deed in 1952 and construction of the house addressed as 5432 39th Avenue West in 1957 (Findings of Fact Nos. 4 and 5). The third exception, in Section 23.44.010 B 3, is for lots reduced in area due to court-ordered adverse possession, and it too does not apply. There is no documentation of any adverse possession claim or settlement pertaining to Parcel 0065.
4. The fourth exception is provided in Section 23.44.010 B 4, which provides that a lot may qualify as a separate legal building site *if it was established in the public records of the county or City* prior to July 24, 1957 by deed, contract of sale, mortgage, property tax segregation, platting or building permit. A further requirement is that the lot must not be developed with all or part of a principal structure. If the lot has been developed with all or part of a principal structure, then according to the last paragraph of Section 23.44.010 B 4, the removal of that structure at any time after January 18, 1987 will not qualify the lot for the minimum lot area exception of Section 23.44.010 B 4. There is no documentation in the public records showing that unrecorded Lots M and N, comprising Parcel 0065, were established as separate lots prior to 1957. While reference is sometimes made in the permit history to Lots M and N, they are unrecorded lots and thus cannot qualify as lots platted prior to 1957, or platted at all for that matter. The unplatted status of Parcel 0065 is made clear on the SDOT quarter section maps, which show the property as part of a larger “unplatted reserve” parcel. (Finding of Fact No. 1.) According to the DPD abstracts of title, Parcel 0065 was part of a larger parcel until it was conveyed in its entirety to the Thompsons in 1952. Parcel 0065 has been held as a single piece of property ever since. (Finding of Fact No. 5.) Parcel 0065 has also clearly been consolidated into a single building site by permitting and construction of the existing house, as described in Finding of Fact No. 4. So, even if the unrecorded Lots M and N could be considered “lots of record” prior to 1957, they still could not qualify for the exception in Section 23.44.010 B 4, as they fail to meet the conditions of paragraphs a, b, or c of that subsection.
 5. The first exception, the “75/80 rule,” is found in Section 23.44.010 B 1. For this section to apply, a two-part analysis is required. The property must have at least 75% of the minimum required lot area in the applicable zone, and it must have 80% of the mean lot area of the lots on the same block face within which the lot will be located and within the same zone. According to calculations made by surveyor David Hill, Parcel 0065 meets the first part of the two-part test. In the SF-5000 zone, 75% of the minimum required lot area is 3,750 square feet. Using either method employed by Mr. Hill for calculating the total area of Parcel 0065, as described in Finding of Fact No. 6, the property has more dry land area than the minimum amount of 7,500 square feet necessary for short subdivision into two parcels of 3,750 square feet or more each.
 6. Since the first part of the 75/80 test is met, it is the application of the second part of the test that is central to the decision in this interpretation. In the letter to DPD received March 25, 2004 and drafted by Mr. Hill in support of the request for interpretation (see Findings of Fact Nos. 3, 6, and 7), the contention is made that the block face to be analyzed comprises 24 separate “lots” on the east side of 39th Avenue West between West Sheridan Street on the north side and West Cramer Street on the south side. These 24 “lots” include Lots A-P of Bolcom Canal Lumber Company’s Addition (Unrecorded) and Lots A-H, Scheuerman Investment Company Tracts (Unrecorded). The parties requesting this interpretation thus would determine the mean lot area of the other lots on the block face by dividing the total area of the block face by the total number of unrecorded lots, regardless of whether the individual unrecorded lots meet the minimum lot area requirement, qualify for the exception made for historic lots in Section 23.44.010 B 4, or have been consolidated by development. If the method and

- area estimates set forth in the letter received March 25, 2004 are used, then the total area of the block front is 94,502 square feet, as derived from measurements based on DPD aerial photographs. If 94,502 is divided by 24, the average lot size calculated is approximately 3,937 square feet. Eighty percent of 3,937 is about 3,150 square feet so, according to the analysis of the request for interpretation, Parcel 0065 would have sufficient area to meet the second part of the 75/80 test, with areas in excess of 3,150 square feet, at about 3,983 square feet each (i.e., total area of about 7,966 square feet divided by two).³
7. The analysis described in Conclusion 6 is not acceptable, as it is contrary to the plain language of Section 23.44.010 B 1. The intent of the minimum lot area exceptions, particularly as applied to the 75/80 test, is set forth in the first paragraph of Section 23.44.010 B 1, which says that the minimum lot area exceptions are permitted in order to allow consolidation of very small lots into large lots, to adjust lot lines to permit more orderly development patterns, and *to create additional buildable sites out of oversized lots which are compatible with surrounding lots.* (Finding of Fact No. 8.) Parcel 0065 is not “oversized” in comparison with the other ten development sites on its block front but is instead roughly the same size as those other lots. It is plain that the concept of creating an exception based on comparison to the area of other lots on the same block front is to ensure that lots created according to the exception are consistent with the size of other developed lots in the immediate vicinity, rather than consistent with some abstract platting pattern. As discussed in Finding of Fact No. 11, the actual development pattern of a neighborhood often bears little relationship to the size of the individual underlying platted lots. Some areas of the city, in single-family zones, are platted as half-acre or one-acre tracts, while other areas are platted as lots of 25 feet by 100 feet or even smaller. The half-acre or one-acre tracts typically have been carved up to create smaller lots, and the 25-foot platted lots have typically been consolidated to form larger development sites, often 50 feet in width. The block face in question is a good example of the practice of consolidating original platted lots: *Every development site on the block face*, except 5444 39th Avenue West, has been developed with a single house straddling two unrecorded platted lots. No discernable policy intent would be served by applying the 75/80 lot area exception based on the mean area of individual platted lots, where the prevailing development pattern is based on a consolidation of those platted lots to create larger building sites.
 8. Instead of considering only the *total* number of unplatted lots on a block face, the DPD practice as described in Conclusion 7 begins by considering the number of sites on the block face that are actually developed with houses, regardless of the number of platted lots within each development site. If the DPD method is used with the same area calculations proposed by Mr. Hill, then there are ten development sites on the subject block face, leaving Parcel 0065 out of the calculation, ranging from 5454 39th Avenue West on the north to 5402 39th Avenue West on the south (see map at Appendix A). If the total area of 85,536 square feet (see Footnote 3) is divided by ten, the mean lot area is about 8,536 square feet. Since eighty percent of 8,536 is about 6,828 square feet and this figure is *larger* than the area resulting from dividing Parcel 0065 into two lots (i.e., 3,983 square feet), the second part of the 75/80 test is not met for a proposed subdivision of Parcel 0065 into two lots. Under the DPD method of applying the 75/80

³ It must be noted that DPD practice in applying the 75/80 rule is to leave the lot to be subdivided out of the calculation. The DPD method is generally to a property owner’s advantage, since leaving the lot to be subdivided out of the application eliminates a lot larger than the average on the block front from inclusion in the averaging test. If the subject property is omitted from the calculation in this manner, and the unrecorded platted lots are otherwise averaged in as separate lots as proposed by the applicant, the same result is achieved. The total area of the block front leaving Parcel 0065 out of the calculation is about 85,536 square feet which, divided by 22 unplatted lots equals an average of 3,933 square feet per unplatted lot. Eighty percent of 3,933 is about 3,146 square feet, which is also less than the area for each lot in a proposed short subdivision of Parcel 0065.

averaging test, Parcel 0065 does not qualify for an exception to minimum lot area and must either remain as one legal building site, or a variance must be approved to establish two lots with less than the required minimum lot area for the zone.

9. The DPD analysis of the 75/80 rule in Conclusions 7 and 8 is more appropriate than the method suggested in the request for interpretation and summarized in Conclusion 6 for reasons of basic statutory interpretation. The 75/80 rule is an *exception* to the basic minimum lot area standard requiring, in the zone in which Parcel 0065 is located, a minimum lot size of 5000 square feet. As an exception to a general administrative regulation, the 75/80 rule should be construed strictly, rather than construed as liberally as possible to achieve a particular result. (See Finding of Fact No. 10.) The requisite narrow construction is achieved, not only for Parcel 0065 but in all cases in which the rule is applied throughout the City of Seattle, by using actual development sites on the ground in calculating mean lot area, rather than using platted divisions of land within existing development sites that, in themselves, are not regulated as separate sites.
10. Even if the averaging method proposed by the request for interpretation and summarized in Conclusion 6 were accepted, however, it still cannot be applied to Parcel 0065. The unrecorded platted lots that are proposed to be used in the 75/80 test are *not* legally platted lots and thus have no actual legal status. The underlying legal description of the block face on which Parcel 0065 is found is an “unplatted reserve” as shown on the SDOT quarter section map (Appendix C). Unrecorded lots do not legally exist so, in the subject case, the only “lots” to compare on the subject block face are those created as actual development sites by building permit or tax segregation as shown on the land use map attached as Appendix A.

DECISION

Tax parcel 090400-0065, addressed as 5432 39th Avenue West, is currently developed with one existing single family residence and developed as one legal building site. Although larger than the applicable minimum lot area standard of 5000 square feet set by SMC Section 23.44.010 A, Parcel 0065 lacks sufficient area for short subdivision into two lots meeting the minimum lot area standard, and does not qualify for any of the exceptions to minimum area set forth in SMC Section 23.44.010 B. In particular, Parcel 0065 does not qualify for the 75/80 exception to minimum lot area, as the total area of Parcel 0065 is only 7,966 square feet (enough area for two lots at least 75% of the minimum lot area), but the other lots on the same block face have a mean lot area of 8,536 square feet. Eighty percent of 8,536 is 6,828 square feet, which is far larger than the lots areas that could be achieved in any proposed short subdivision of Parcel 0065. Accordingly, variance approval is required as part of any application for a short subdivision of Parcel 0065 into more than one lot.

Entered this 5th day of August, 2004.

(signature on file)
William K. Mills
Land Use Planner, Department of Planning and Development